

January 24, 2005

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reference No.: 05-0025

Ms. Sandra Alleyne
Covenant Painting & Specialty Coatings
P. O. Box 56316
Portland, OR 97238

Dear Ms. Alleyne:

This is in response to the appeal you filed on behalf of Covenant Painting & Specialty Coatings (Covenant). We have carefully reviewed the material from the Oregon Department of Consumer and Business Services, Office of Minority, Women and Emerging Small Business (OMW&ESB) and have concluded that the denial of Covenant's certification as an eligible Disadvantaged Business Enterprise (DBE) under criteria set forth in 49 CFR Part 26 ("the Regulation") is justifiable.

Your appeal is denied based upon a determination that you, the disadvantaged owner of the company failed to cooperate with the recipient by failing to provide the requested information after numerous attempts by OMW&ESB.

The specific reasons for the denial of your appeal include the following:

The Regulation provides that applicant DBE firms shall cooperate with recipients by providing all requested documentation necessary to render a determination as to the firm's eligibility for DBE status. The record evidence reveals that OMW&ESB mailed the "Annual No Change Affidavit" to your firm on April 14, 2004. The letter stated "Please return the affidavit and tax returns within 30 days. Failure to do so may result in decertification of your company." By letter dated May 12, 2004, OMW&ESB notified you that it had not received the information requested in its April 14, 2004 letter and that failure to provide the requested information would result in decertification. On June 7, 2004, OMW&ESB sent you a CERTIFIED MAIL informing you that your firm will be decertified for failure to provide the requested information. The letter informed you that pursuant to §26.83(j) "If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.

The letter also stated that failure to provide the requested information is a violation of 49 CFR part 26§26.109(c) and that failure to provide the requested information could result in the firm being considered ineligible to participate in the DBE program. Your firm was afforded the opportunity to respond within twenty one (21) days. The record is void of any information that you requested a hearing, and as a result your firm was decertified as a DBE.

Your letter of rebuttal states “I know that it was an over si[gh]t on my part not discovering that the affidavit needed to be mail[ed] back, but my husband got very sick at that time and past away Jul 1, 2004. I did not discover this over si[gh]t until after my husband past. I do not feel the appeal exceed the filing period.”

Based on the above findings, we have determined that Covenant does not meet the requirements of the Department's Regulation 49 CFR Part 26.109(c) which states, in part, as follows:

“All participants in the Department’s DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g. with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of nonresponsibility for future contracts and/or suspension and debarment).”

In summary, the information provided cumulatively supports a conclusion that Covenant does not meet the criteria as required for DBE certification under 49 CFR Parts 23 and 26. The company is, therefore, ineligible to participate as a DBE on OMW&ESB's Federal financially-assisted projects. This determination is administratively final as of the date of this letter.

Sincerely,

Joseph E. Austin, Chief
External Policy & Program Development Division
Departmental Office of Civil Rights

cc: OMW&ESB